H.R. 3, the Keystone XL Pipeline Act

H.R. 3, THE "KEYSTONE XL PIPELINE ACT"
MOTION TO RECOMMIT WITH INSTRUCTIONS
OFFERED BY THE HONORABLE JOHN GARAMENDI
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Summary

According to the U.S. Coast Guard, if there is a spill of tar sands (also called oil sands) from the Keystone XL pipeline, financial resources would be made immediately available from the Oil Spill Liability Trust Fund (OSLTF) for the purpose of cleaning up the spill. At the same time, however, tar sands imported into the United States are **not** subject to the excise tax on crude oil received at U.S. refineries and petroleum products imported into the U.S. This excise tax is used to capitalize the OSLTF.

This amendment requires that Keystone XL pipeline tar sands imports will be subject to the 8-cent per-barrel excise tax that is currently collected on U.S. crude oil and petroleum products and deposited into the OSLTF. It is these funds that are used to respond to and clean up oil spills, as well as to pay claims to those who have incurred response costs or suffered damages as a result of an oil spill.

Background

In the 1980s, Congress established the OSLTF to ensure that resources were immediately available to respond to and clean up releases of oil on land and in coastal waters. Monies from the OSLTF have been used to respond to thousands of oil spills, including the BP Deepwater Horizon oil spill in the Gulf of Mexico and the Enbridge tar sands spill in Kalamazoo, Michigan.

The largest source of revenue to the OSLTF is the 8-cent per-barrel excise tax that is collected from crude oil received at U.S. refineries and petroleum products that enter into the U.S. for consumption, use, or warehousing.[1] In 2011, the Internal Revenue Service (IRS) issued a technical advice memorandum that concluded that the definitions of "crude oil" and "petroleum product" in section 4612 of the Internal Revenue Code do not clearly include tar sands imported into the U.S. and, therefore, in the absence of a clear definition, tar sands would not be subject to the excise tax that is imposed on imports of petroleum products under section 4611.[2] As a result, the imports of tar sands through the Keystone XL pipeline are exempt from approximately $24 million in taxes ($66,400 per day), providing an economic benefit not afforded to U.S. crude oil companies.[3]

The IRS based its ruling on language from a 1980 Committee on Ways and Means report that stated that the term crude oil does not include liquids from "tar sands" among other things. In other words, the IRS based its ruling on Congressional intent. Therefore, it is incumbent upon

[1] 26 U.S.C. 4611.
[2] http://apps.irs.gov/app/picklist/list/writtenDeterminations.html;jsessionid=b9wJDBlU92HfJ5OFk9DI7A__?value=201120019&criteria=number&submitSearch=Find.
[3] TransCanada estimates that the completed Keystone XL pipeline will have the capacity to transport 830,000 barrels of oil per day to the Gulf Coast and Midwest refineries. See http://keystone-xl.com/about/the-project/.

Congress to correct or clarify that intent to ensure that tar sands are subject to the excise tax that funds the OSLTF because tar sands spills are indeed going to be cleaned up using OSLTF dollars.

Without this clarification, the importers of tar sands on the Keystone XL pipeline will avoid the per-barrel excise tax that is charged to all other oil companies refining crude oil in the United States.

Amendment

This amendment requires that TransCanada Keystone Pipeline, L.P certify to the President that diluted bitumen and other material derived from tar sands or oil sands that are transported through the pipeline will be treated as crude oil for the purposes of determining contributions to the Oil Spill Liability Trust Fund.